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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,304	07/24/2003	Aaron Strand	8362-CIP-CIP-DIV	1940
22922 7590 02/02/2011 REINHART BOERNER VAN DEUREN S.C. ATTN: LINDA KASULKE, DOCKET COORDINATOR 1000 NORTH WATER STREET SUITE 2100 MILWAUKEE, WI 53202				
EXAMINER THAKUR, VIREN A				
ART UNIT		PAPER NUMBER		
1782				
NOTIFICATION DATE		DELIVERY MODE		
02/02/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPAdmin@reinhardtllaw.com

# Office Action Summary

## Application No.

10/626,304

## Applicant(s)

STRAND ET AL.

## Examiner

VIREN THAKUR

## Art Unit

1782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 148,152-155,157-167,169,179,187-191 and 193-218 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 148,153-155,157-167,169,179,187-191 and 193-218 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-532)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

1. As a result of the amendment to the claims, the rejection of claims 169,179,191,217,218 under 35 U.S.C. 112, second paragraph has been withdrawn.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. **Claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190,193-197, 201-203, 205-213 and 216-218 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stolmeier et al. (US 6257763) in view of May (US 5725312), Belmont et al. (US 6327754), McMahon (US 6138439) and Weeks (US 5092684) and in further view of**

**Buchman et al. (US 20010053253), Provan (US 6286189), and Malin (US 6183134), for the reasons given in the Office Action, mailed August 20, 2010.**

**5. Claims 161-163, 167, 198-200 and 204 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203 and 205-213, 216-218, above, and in further view of Hayashi (US 6074097), for the reasons given in the Office Action, mailed August 20, 2010.**

**6. Claims 191, 214, 215 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203 and 205-213, 216-218, above, and in further view of Van Erden et al (US 4925316), Handler (EP450741) and Ausnit (EP0951989 - US 6694704 has also been relied on as an English equivalent), for the reasons given in the Office Action, mailed August 20, 2010.**

Regarding the intended use of the backing strip, "to close the opening after the reclosable bag is filled with at least one food product through said opening," as recited in claim 191, it is noted that the backing strip, as taught by Malin and Handler would also have been capable of this intended use, since the backing strip couples the skirt of the reclosable fastener to the sidewall of the bag.

7. Claims 148, 152- 155, 157- 160, 164-166, 169,179,187- 190, 193-197, 201-203, 205-213 and 216- 218 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buchman et al. (US 20010053253) in view of Stolmeier et al. (US 6257763) and McMahon (US 6138439) and in further view of May (US 5725312), Belmont et al. (US 6327754), Weeks (US 5092684), Provan (US 6286189), and Malin (US 6183134), for the reasons given in the Office Action, mailed August 20, 2010.

8. Claims 161-163, 167, 198-200 and 204 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157- 160, 164-166, 169, 179, 187-190,193-197, 201-203, 205-213 and 216-218, above in the rejection relying on Buchman (US 20010053253) as the primary reference, and in further view of Hayashi (US 6074097), for the reasons given in the Office Action, mailed August 20, 2010.

9. Claims 191, 214, 215 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164- 166, 169, 179, 187-190,193-197, 201-203, 205-213 and 216-218, above in the rejection relying on Buchman (US 20010053253) as the primary reference, and in further view of Van Erden et al (US 4925316), Handler (EP450741) and Ausnit (EP0951989 - US 6694704 has also been relied on as an English equivalent), for the reasons given in the Office Action, mailed August 20, 2010.

Regarding the intended use of the backing strip, "to close the opening after the reclosable bag is filled with at least one food product through said opening," as recited in claim 191, it is noted that the backing strip, as taught by Malin and Handler would also have been capable of this intended use, since the backing strip couples the skirt of the reclosable fastener to the sidewall of the bag.

10. **Claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203, 205-213 and 216-218 rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 6148588) in view of Buchman et al. (US 20010053253) and in view of Stolmeier et al. (US 6257763), McMahon (US 6138439), Belmont et al. (US 6327754), Weeks (US 5092684), Provan (US 6286189), May (US 5725312) and Malin (US 6183134), for the reasons given in the Office Action, mailed August 20, 2010.**

11. **Claims 161-163, 167, 198-200 and 204 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203, 205-213 and 216-218, above in the rejection relying on Thomas et al. (US 6148588) as the primary reference, and in further view of Hayashi (US 6074097), for the reasons given in the Office Action, mailed August 20, 2010.**

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Regarding the intended use of the backing strip, "to close the opening after the reclosable bag is filled with at least one food product through said opening," as recited in claim 191, it is noted that the backing strip, as taught by Malin and Handler would also have been capable of this intended use, since the backing strip couples the skirt of the reclosable fastener to the sidewall of the bag.

### ***Response to Arguments***

13. Applicant's arguments filed November 22, 2010 have been fully considered but they are not persuasive.

14. On page 19 of the response, applicants state that the examiner provides no reason why one of ordinary skill in the art of bags would modify Stolmeier or Buchman since there is nothing in the principal cited prior art to suggest or teach that a single web material for the hood and bag is need, appropriate or desired.

This argument has been considered but is not persuasive. It is noted that May, Belmont, McMahon and Weeks all teach that it has been conventional to employ a single sheet of material which can function to make both a hood portion which would cover the reclosable fastener, as well as the body of the bag. Weeks even teaches that a single sheet of material can be employed to produce both the hood as well as a side seam for filling product into the bag. As recited in the previous Office Action, the art thus teaches that it has been conventional to employ a single sheet of web material to produce both the hood structure which covers the reclosable fastener and the body of the bag and thus to modify Stolmeier et al. and employ a single sheet of material, when the art already teaches that such single sheets of material can be employed to produce both the bag and the hood structure would thus have been an obvious matter of choice and/or design to the ordinarily skilled artisan. Additionally, it is noted that it would have been obvious to one having ordinary skill in the art that the use of a single sheet of web material would have reduced the number of seals required to produce both the hood and the bag. In view of the teachings of May, Belmont, McMahon and Weeks and in combination with the knowledge of one having ordinary skill in the art, there would have been motivation to employ a single sheet of web material to produce the hood and the bag of Stolmeier or Buchman, since the art teaches that employing single pieces of web material for this same purpose has been conventional, and since such a modification would also have reduced the number of seals required to close the bag.

15. On page 20 of the response, applicants assert that the Examiner is picking individual elements from the cited prior art, in an attempt to assert obviousness of that

which is disclosed and claimed in the present application. It is noted however, that the art teaches and provides motivation for employing those elements recited in the claimed invention, such as the single sheet of web material, as discussed above.

16. Further on page 20 of the response, applicants assert that the fact that the primary reference, Stolmeier et al. and Buchman, both do not teach that the hood and bag are made from a single piece of web material, "flies in the face of reasonable analysis and assertion of prima facie obviousness on the part of the Examiner."

This argument has been considered but is not persuasive. In this case, the secondary references teach that it has been conventional to employ a single sheet of web material for the same purpose that both Stolmeier and Buchman employ two pieces of material. Therefore, since it would have been obvious that the use of a single sheet of web material would have reduced the number of seals required to make the bag, for instance, than to employ a single sheet of web material would have been obvious to one having ordinary skill in the art for this purpose.

Additionally, since the art teaches employing both a single sheet and two sheets of web material for the same purpose, then to employ a single sheet would indeed have been an obvious substitution of one expedient for producing the hood and body of the bag for another conventional expedient employed for this same purpose which would indeed have been a matter of choice and/or design.

17. Further on page 20, Applicants assert that modification of Stolmeier et al. would reconstruct Stolmeier et al. and eliminate the features of Stolmeier that are pertinent to the claims of Stolmeier et al.

This argument has been considered but is not persuasive. It is not seen that the use of a single sheet to make the hood (figure 7 and 7B, item 60) and the body of the bag (figure 7A and 7C) would have resulted in eliminating any features of the claims of Stolmeier et al., especially since the hood would still have served the same purpose and would still have been able to have areas of structural weaknesses such that removal of the hood would have resulted in the reclosable fastener extending above the bag.

18. Further on page 20, Applicants assert that the Office Actions do not provide any reasons or factual basis that one skilled in the art will not only modify but completely reconstruct and redesign the Stolmeier et al. reference to attempt to arrive at the claimed invention of the present application.

This argument has been considered but is not persuasive. It is noted that the use of a single sheet of web material has been discussed above. Another feature of the claimed invention appears to be an opening between a skirt structure and a side panel of the bag. Nevertheless, the art teaches that "side filling" of bags, as taught by Buchman and Belmont have been conventional for bag structures that are similar to that of Stolmeier et al. It is noted that Buchman even teaches that filling from various locations on the bag (see paragraph 0056 and 0065). Weeks also teaches openings on

the side and bottom, as shown in figures 3 and 4. Therefore, it is not seen to have required undue experimentation or modification to the bags employed by Stolmeier et al. to employ a "side opening" between a skirt structure of the reclosable fastener and the side panel of the bag, especially when the art teaches that it has been a conventional expedient to fill from such a side of the bag when employing filling machines (see Belmont, Figure 3A). Applicants reiterate these arguments on pages 21-22 of the response, and thus are not persuasive for the reasons given above.

### ***Conclusion***

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIREN THAKUR whose telephone number is (571)272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Viren Thakur/  
Examiner, Art Unit 1782

/Rena L. Dye/  
Supervisory Patent Examiner, Art Unit 1782